

§ 779.203

are performed by more than one person, or in more than one establishment, or by more than one corporate or other organizational unit. Specifically included, as a part of the enterprise, are departments of an establishment operated through leasing arrangements. On the other hand, the definition excludes from the “enterprise” activities only performed “for” the enterprise rather than as a part of it by an independent contractor even if they are related to the activities of the enterprise. Also, it makes clear that a truly independent retail or service establishment does not become a part of a larger enterprise merely because it enters into certain types of franchise or collective purchasing arrangements or because it has a common landlord with other such retail establishments.

§ 779.203 Distinction between “enterprise,” “establishment,” and “employer.”

The coverage, exemption and other provisions of the Act depend, in part, on the scope of the terms *employer*, *establishment*, or *enterprise*. As explained more fully in part 776 of this chapter, these terms are not synonymous. The term *employer* has been defined in the Act since its inception and has a well established meaning. As defined in section 3(d), it includes, with certain stated exceptions, any person acting directly or indirectly in the interest of an employer in relation to an employee. (See § 779.19.) The term *establishment* means a *distinct physical place of business* rather than an *entire business or enterprise*. (See § 779.23.) The term *enterprise* was not used in the Act prior to the 1961 amendments, but the careful definition and the legislative history of the 1961 and 1966 amendments provide guidance as to its meaning and application. As defined in the Act, the term *enterprise* is roughly descriptive of a business rather than of an establishment or of an employer although on occasion the three may coincide. The enterprise may consist of a single establishment (see § 779.204(a)) which may be operated by one or more employers; or it may be composed of a number of establishments which may be operated by one or more employers (see § 779.204(b)). The enterprise is not nec-

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essarily coextensive with the entire business activities of an employer; a single employer may operate more than one enterprise (see § 779.204(c)). The Act treats as separate enterprises different businesses which are unrelated to each other even if they are operated by the same employer.

§ 779.204 Common types of “enterprise.”

(a) *The single establishment business.* In the simplest type of organization—the entire business ordinarily is one enterprise. The entire business activity of the single owner-employer may be performed in one establishment, as in the typical independently owned and controlled retail store. In that case the establishment and the enterprise are one and the same. All of the activities of the store are “related” and are performed for a single business purpose and there is both unified operation and common control. The entire business is the unit for applying the statutory tests. If the coverage tests are met, all of the employees employed by the establishment are employed in the enterprise and will be entitled to the benefits of the Act unless otherwise exempt.

(b) *The multiunit business.* In many cases, as in the typical chain of retail stores, one company conducts its single business in a number of establishments. All of the activities ordinarily are related and performed for one business purpose, the single company which owns the chain also controls the entire business, and the entire business is a single enterprise. The dollar volume of the entire business from all of its establishments is added together to determine whether the requisite dollar volume tests are met. If the coverage tests are met, all of the employees employed in the business will be entitled to the benefits of the Act unless otherwise exempt.

(c) *Complex business organizations.* In complex retail and service organizations, questions may arise as to whether certain activities are a part of a particular enterprise. In some cases one employer may operate several separate enterprises; in others, several employers may conduct their business activities in such a manner that they are

part of a single enterprise. The answer, in each case, as to whether or not the “enterprise” includes certain activities will depend upon whether the particular activities are “related” to the business purpose of such enterprise and whether they are performed with its other activities through “unified operation” or “common control,” or whether, on the other hand, they are performed for a separate and distinct business purpose. As the Senate Report states,

related activities conducted by separate business entities will be considered a part of the same enterprise where they are joined either through unified operation or common control into a unified business system or economic unit to serve a common business purpose.

(S. Rept. 145, 87th Cong., 1st Sess., p. 41; see also H. Rept. 1366, 89th Cong., 2d Sess., p. 9.) §§ 779.205 through 779.211 discuss the terms of the definition and may aid in making these determinations.

RELATED ACTIVITIES

§ 779.205 Enterprise must consist of “related activities.”

The enterprise must consist of certain “related activities” performed for a common business purpose; activities which are not “related” are not a part of the enterprise even if performed by the same employer. Moreover, even if activities are “related” they may be excluded from the enterprise if they are performed only “for” the enterprise and not as a part of it by an independent contractor. This is discussed separately in § 779.206.

§ 779.206 What are “related activities.”

(a) The Senate Report on the 1961 amendments states as follows, with respect to the meaning of related activities:

Within the meaning of this term, activities are “related” when they are the same or similar, such as those of the individual retail or service stores in a chain, or departments of an establishment operated through leasing arrangements. They are also “related” when they are auxiliary and service activities such as central office and warehousing activities and bookkeeping, auditing, purchasing, advertising and other services. Likewise, activities are “related” when they are part of a vertical structure such as the manufacturing, warehousing, and retailing of a par-

ticular product or products under unified operation or common control for a common business purpose. (Senate Report No. 145, 87th Cong., 1st Sess., Page 41.)

Thus, activities will be regarded as “related” when they are the same or similar or when they are auxiliary or service activities such as warehousing, bookkeeping, purchasing, advertising, including, generally, all activities which are necessary to the operation and maintenance of the particular business. So also, all activities which are performed as a part of the unified business operation will be “related,” including, in appropriate cases, the manufacturing, warehousing, and distribution of its goods, the repair and maintenance of its equipment, machinery and its premises, and all other activities which are performed for the common business purpose of the enterprise. The Senate Report on the 1966 amendments makes it plain that related, even if somewhat different, business activities can frequently be part of the same enterprise, and that activities having a reasonable connection with the major purpose of an enterprise would be considered related. (Senate Report No. 1487, 89th Cong., 2d Sess., Page 7.) A more comprehensive discussion of “related activities” will be found in part 776 of this chapter.

(b) Generally, the answer to the question whether particular activities are “related” or not, will depend in each case upon whether the activities serve a business purpose common to all the activities of the enterprise, or whether they serve a separate and unrelated business purpose. For example, where a company operates retail or service establishments, and also engages in a separate and unrelated construction business, the construction activities will not be “related” and will constitute a separate enterprise if they are conducted independently and apart from the retail operations. Where, however, the retail and construction activities are conducted for a common business purpose, they may be “related,” and if they are performed through unified operation or common control, they will be a part of a single enterprise. Thus, a retail store enterprise may engage in construction activities as an additional outlet for